STATEMENT OF SENATOR JOHN McCAIN
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COMMERCE, SCIENCE, AND TRANSPORTATION
FULL COMMITTEE HEARING ON CABLE RATES
TUESDAY, JULY 28, 1998

Good morning. This hearing will focus on the seemingly relentless increase in the rates consumers pay for cable television service. I would like to thank the witnesses for appearing this morning to give us their perspectives on why these rate increases are occurring and what Congress should do about it.

I particularly appreciate the testimony that will be given by the distinguished Members of Congress who will appear on our first panel. We welcome to the Commerce Committee my friend and colleague, Senator Feingold; the distinguished Chairman of the House Telecommunications Subcommittee, Representative Billy Tauzin, and Representative Peter DeFazio. They have all sponsored legislation dealing, in varying ways, with the problems of cable industry dominance, and we look forward to their views today. They will be followed by a second panel of witnesses consisting of Leo J. Hindery, President of TCI; James O. Robbins, CEO of Cox Communications, Charles W. Ergen, CEO of Echostar Communications Corporation, and Gene Kimmelman, Co-Director of Consumers Union. I welcome you all and look forward to your testimony.

Before we begin, let me tell you why we are holding this hearing today.
In this summer of 1998, Congress, consumers, and the cable television industry all stand at a crossroad. We stand at that crossroad because of a date on the calendar: March 31, 1999, about eight months from now.

March 31, 1999 is the date Congress established for the deregulation of rates for most cable programming services. Congress established that date in the 1996 Telecom Act, hoping that competitive alternatives to cable would have developed to the point that further regulation of cable rates would be unnecessary.

We now know that hasn't happened. Cable rates have continued to soar, efforts to create viable competition to cable television have faltered, and the Federal Communications Commission's attempts to regulate cable rates have failed. The only thing that seems to be running as planned is the clock, bringing us closer to the March 31 deregulation date.

So now Congress must choose which of several possible paths it will travel. Some urge that we reregulate cable, saying that we should cancel the March 31 deregulation date, put more teeth into cable rate regulation, and perhaps even freeze cable rates. Others --myself included -- believe that competition clearly beats regulation as the most effective check on cable's pricing power, and therefore we should focus our efforts on eliminating whatever impediments to competition persist. The cable industry argues that there's no pressing need to do anything, because its rate increases are reasonable in light of increases in the number of channels of cable programming, escalation in programming costs, and the expense of upgrading cable systems throughout the industry. And others are looking for ways to make cable service more affordable, by encouraging cable systems to break up their current multichannel tiers of into smaller channel packages for a la carte purchase. With an eye to next March 31, today's hearing will look into these alternatives.

Let me first describe why most outside the cable industry believe that Congress must take one or more of these paths. The statistics on cable rates bear out what most consumers already know: monthly cable TV bills have increased steadily and substantially over the last several years. Since 1994 the increases in cable rates have far outstripped the rate of inflation, ballooning 10 percent in 1996 and another 7.5 percent in 1997. These increases are only averages, of course, which means that in some places cable rates have gone up appreciably more, sometimes over 20 percent. And the pace of cable rate increases hasn't slackened: last month *alone* cable rates increased a whopping seven times the adjusted Consumer Price Index.

To be sure, the cable industry is correct in many of its claims: subscribers *are* getting more channels of programming -- 51 on average last year, compared to 45 three years ago -- many systems *are* being upgraded, and cable programming costs *are* increasing. But these facts may not tell the whole story.

Take the high cost of cable programming, for instance. Many cable programming channels continue to be owned by the same companies that own the largest cable systems, and it's been reported that last year the vertically-integrated cable industry spent *four times* as much to produce cable programming as broadcasters spent to produce broadcast programming. With the high degree of vertical integration that exists between cable operators and cable program producers, there's not much incentive to hold down costs -- high cable programming costs increase the amount that cable's competitors have to pay for cable programming, while the big cable companies that complain about the high cost of cable programming are really paying themselves when they buy it.

It's also claimed that the costs of cable system upgrades are reasonable, because FCC rules prohibit cable companies from passing along the costs of providing costly new advanced nonvideo services like high-speed Internet access. The problem here is that the FCC has never adopted uniform cost allocation rules for the cable industry. As a result, there is no reliable way of making sure what cable systems' costs really are or how they are actually being recovered. And without that, there is no practical way of assuring that subscribers aren't being forced to pay for services they aren't getting or don't want to get. Without any real regulation and without effective competition, cable can raise rates pretty much at will. So it's not surprising that cable rates keep going up, or that only 37 percent of the cable subscribers recently surveyed by *Cable World* magazine considered cable service to be a good value.

These trends will continue, especially the escalation in programming costs, and cable rates will continue to rise. ESPN, which is not owned by a cable company, recently paid $4.8 *billion* for cable rights to the NFL for the next eight years. If ESPN were to pass these costs along evenly to all 72 million cable TV households, this single programming cost alone would cause cable rates to go up another 1.5 percent.
And so we come back to where we started --at the crossroad of deciding what should be done to constrain cable rates without hurting cable's ability to provide new programming and new services at a fair price and in response to consumer demand.
In my judgment, we should *not* go down the path of tightening up or extending cable rate regulation. In the first place, FCC rate regulation simply hasn't worked: cable rates actually increased faster *after* the FCC began regulating them than *before*. Certainly the FCC deserves a healthy part of the blame for the ineffectiveness of its rate regulation rules; but the fact remains that *no* rate regulation rules can ever be as effective as competition in achieving consumer welfare. As the *New York Times* stated in an editorial last December entitled "Soaring Cable Rates,"

> The least promising antidote to soaring rates is price controls. Such controls have done more to squelch innovation and investment in cable systems than to protect consumers. When controls are lifted --as eventually they must be --prices promptly make up for all lost ground. The better answer is tough-minded regulations that pry open the cable market to competition...

Soon I will introduce legislation designed to do just that --remove the roadblocks to cable competition that law and regulation have unintentionally left in place. I will work to secure the passage of new laws that will open the door to more competition to cable and lower costs for consumers.

But this brings us to another difficult choice: namely, what should we do *in the meantime* to keep cable rates from increasing until competition can take over the job? Many possibilities suggest themselves, including the so called "mini-tiering" of cable services into smaller, less-expensive packages. By breaking out more expensive services, we would make it possible for consumers to buy only those channels they want, at prices that would not subsidize the cost of more expensive channels that the same consumer doesn't watch and shouldn't have to pay for.

In this area we would do well, I think, to bear in mind the cardinal precept of the medical profession: "first, do no harm." Mini-tiering and a la carte pricing are attractive possibilities that should be explored, because in a perfect world subscribers would buy only the channels and services they actually wanted. But breaking apart *existing* tiers of programming to offer cable channels individually or in smaller packages could change the prices consumers pay for cable channels rather substantially and unexpectedly --some channels will become less expensive, but some will become much more expensive. In addition, re-tiering requires special equipment whose costs would be passed on to subscribers, thereby offsetting at least some of the savings that might otherwise be achieved. In examining re-tiering, therefore, we must make sure that consumers will actually benefit, and that the benefit exceeds whatever costs would be entailed.

In closing, let me repeat that the problems with regulation and the complications of re-tiering demonstrate, yet again, that *nothing* is better at bringing prices into line with costs, and services into line with consumer demands, than real competition. In saying this I acknowledge the efforts of those in the cable industry who are trying to hold the line on price increases; but the voluntary efforts of the cable industry are no substitute for the relentless discipline of a competitive market. And *that* you do not face.

So in the final analysis it may well be the cable industry, and not Congress or even consumers, that today stands at the most critical crossroads of all. For if we cannot follow a path to competition, some form of regulation will be the only avenue open to us. As someone who believes in the ultimate futility of regulation, I hope that's a road we can avoid going down; but in the end I would tolerate regulation before I will tolerate an unregulated industry that does not face price-constraining competition.

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